

## Message Text

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INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-04 H-02 INR-07 L-03

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C: WSHINN

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FM SECSTATE WASHDC

TO AMEMBASSY BONN PRIORITY

INFO USMISSION USBERLIN PRIORITY

AMEMBASSY LONDON

AMEMBASSY MOSCOW

AMEMBASSY PARIS

USMISSION NATO

AMEMBASSY BERLIN

C O N F I D E N T I A L STATE 004129

E.O. 11652: GDS

TAGS: PGOV, PFOR, WB, GW, UR

SUBJECT: FRG - SOVIET LEGAL ASSISTANCE AGREEMENT

REF: (A) BONN 20119, (B) USBERLIN 2557, (C) BONN 20427,  
(D) USBERLIN 2608

1. DEPARTMENT HAS CONSIDERED EXTENSIVE ANALYSIS BY  
EMBASSY BONN AND USBERLIN, AND SHARES THE CONCERNS OF  
BOTH WITH THE TENTATIVE SCENARIO (REF A) FOR REGULARIZING  
THE LEGAL ASSISTANCE PROBLEM BETWEEN THE FRG AND THE USSR.  
ALTHOUGH WE ARE ALSO NOT OPTIMISTIC THAT THE FRG WOULD  
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BE PREPARED TO REOPEN ISSUES PAINSTAKINGLY NEGOTIATED WITH

THE SOVIETS, WE BELIEVE THE EFFORT IS NONETHELESS WORTH MAKING. FOR EXAMPLE, ALLIED VIEWS SWAYED THE FRG TO INSIST ON LINKAGE TO THE TTA IN THE RECENT INNER GERMAN AGREEMENTS. HOWEVER, IF ALLIED EFFORTS TO IMPROVE THE LEGAL ASSISTANCE PACKAGE ARE UNSUCCESSFUL, US REP SHOULD NOT ATTEMPT TO BLOCK THE ARRANGEMENT, BUT CONSIDER DAMAGE LIMITING ACTIONS SUCH AS BK/O APPROACH SUGGESTED PARA 10, REF C.

2. OF IMPROVEMENTS SO FAR RAISED, WE PREFER THAT SET OUT PARA 6, REF B, SINCE DECLARATION ON FRG-USSR LEGAL ASSISTANCE COMMUNICATIONS (PARA 5A, REF A), AT LEAST,

APPEARS TO BE AN AGREEMENT. IF USSR REFUSES US THE FORMAL VICTORY OF PROPER INCLUSION OF WEST BERLIN IN AGREEMENT ON THIS SUBJECT WITH FRG, WE SHOULD THEN EXPLORE REACHING SOLUTION WHICH IS MORE CONSISTENT WITH THEORY THAT NO AGREEMENTS ARE INVOLVED, NOT EVEN FRG-USSR ONE FROM WHICH WSB ARE EXCLUDED. IT STRIKES US THAT BEST WAY TO DO THIS IS TO REPLACE THE FRG-USSR BILATERAL DECLARATION (PARA 5A, REF A) WITH A UNILATERAL USSR ONE. PACKAGE COULD THUS CONSIST OF UNILATERAL SOVIET DECLARATION ON COMMUNICATIONS WITH FRG LAENDER AND UNILATERAL SOVIET DECLARATION ON COMMUNICATIONS WITH WEST BERLIN, FOLLOWED BY UNILATERAL FRG DECLARATION ON COMMUNICATIONS WITH SOVIET REPUBLICS (NOT SPECIFYING WHAT GERMAN LAENDER WERE INVOLVED), AND ENTIRE PACKAGE FOLLOWED BY SOVIET NOTIFICATION TO ALLIES IF THEY INSIST; WITH ALLIED RESPONSE REFERRING TO THE PRACTICAL ARRANGEMENTS ALREADY ESTABLISHED THROUGH THE FRG-USSR DISCUSSIONS. (TO CONFORM TO CHARACTER OF UNILATERAL DECLARATIONS, OPERATIVE VERB WOULD BETTER BE "DECLARES" OR "STATES," RATHER THAN "AGREES" AS SET FORTH IN PRESENT SOVIET DECLARATION CONCERNING BERLIN (PARA 5B, REF A)). ANOTHER OPTION WOULD BE TO ELIMINATE ALL FORMAL DECLARATIONS AND ANNOUNCEMENTS AND INSTEAD SIMPLY TAKE INTERNAL STEPS TO COMMUNICATE DIRECTLY BETWEEN FRG LAENDER AND BERLIN ON ONE HAND, AND SOVIET REPUBLICS ON THE OTHER, ON A BASIS OF RECIPROCITY.

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3. WE WOULD VIEW EITHER OF LATTER TWO APPROACHES AS AN ACCEPTABLE, NON-BINDING MODUS VIVENDI TO DEAL WITH THE PRACTICAL CONSEQUENCES OF THE DISPUTE OVER THE APPLICABILITY OF THE HAGUE CONVENTION AND THE SCOPE OF THE CONSULAR SERVICES PROVIDED FOR IN THE QA. WHATEVER THE OUTCOME, HOWEVER, WE WOULD APPRECIATE RECEIVING STATEMENT OF FRG INTENTIONS WITH REGARD TO MODALITIES FOR INCLUSION OF WSB IN FUTURE AGREEMENTS WITH EAST EUROPEAN STATES.

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